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February 27, 2008

**BY HAND DELIVERY**

The Honorable Richard M. Berman  
United States District Court  
Southern District of New York  
40 Centre Street, Room 650  
New York, NY 10007

**MEMO ENDORSED**

P2

Re: Zim Integrated Shipping Services, Ltd. v. Belco Resources, Inc. et al.  
Southern District of New York, 07 Civ. 5861 (RMB)(GWG)

USDC SDNY
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DATE FILED: 2/27/08

Dear Judge Berman:

We represent plaintiff Zim Integrated Shipping Services, Ltd. in the above captioned matter. We write to seek leave to file a sur-reply in opposition to the joint motion of defendants Sinochem Jiangsu Corporation ("Sinochem"), Nanjing Huabin Foreign Trade and Economics Co., Ltd., ("Huabin") and Belco Resources, Inc., ("Belco") to dismiss and to vacate plaintiff's complaint and prayer for a maritime attachment and garnishment.

Defendants Sinochem, Huabin and Belco filed last Friday their joint reply brief. In their new brief, the defendants raise for the first time several issues of law and factual allegations which were not argued in their originating motion and which plaintiff would like to address in a sur-reply.

More specifically, in further support of their motion to dismiss on grounds of Rule 12(b)(6) and *forum non conveniens*, Defendants Sinochem and Huabin set forth for the first time in their reply brief that:

- (1) an action was commenced in China in January 2008 by a defendant which has not appeared; this new fact would allegedly support their motion on grounds of *forum non conveniens* and would further allegedly undermine the declaration of another defendant, Dragontrans Shipping Services, Ltd., in support of plaintiff's opposition to their motion (*See Reply Brief*, pages 6 and 8);
- (2) their elaborated tally of the number of potential U.S. cargo claimants sued by plaintiff in the second related action docketed 07 Civ 6500 would allegedly indicate that the U.S. defendants represent only a small fraction of the overall number of shippers and defendants (*See Reply Brief*, pages 6-7); this tally is inconsistent with the law and the number of actual or represented claimants against Zim as indicated in the declaration of Thomas Willoughby in support of plaintiff's opposition;

Letter to Judge Berman

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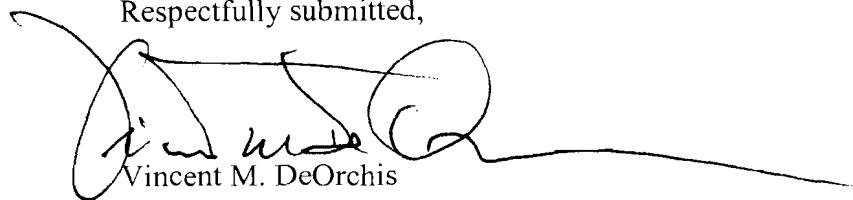
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- (3) a line of cases about “unattributed statements made by agents” would allegedly render the pleadings deficient under Rule 9(b) (See Reply Brief, page 3);
- (4) the Supreme Court’s decision in *Phillips Petroleum v. Shutts* (violation of the Due Process Clause) would allegedly say something different than what plaintiff argued in its opposition brief (See Reply Brief, page 4).

Finally, defendant Belco invokes a new legal argument in support of its motion for *vacatur* of the Rule B attachment by alleging that plaintiff would have already obtained sufficient security (See Reply Brief, pages 9-10).

We seek leave of the Court to file a sur-reply of no more than three (3) pages to respond to these new arguments raised for the first time by the defendants in their reply brief.

Respectfully submitted,



Vincent M. DeOrchis

Encl.

CC: Via e-mail

Lovells, LLP, Attorneys for Sinochem Jiangsu Corporation.

Bennett, Giuliano, McDonnell & Perrone, LLP, Attorneys for Belco Resources, Inc.

Tisdale Law Offices, LLC, Attorneys for Nanjing Huabin Foreign Trade & Economics Co., Ltd.

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<u>Application Granted.</u>
<b>SO ORDERED</b> Date: <u>2/27/08</u> <i>Richard M. Berman</i> Richard M. Berman, U.S.D.J.